

§216.150

50 CFR Ch. II (10–1–12 Edition)

§216.150 Specified activity and specified geographical region.

(a) This subpart applies only to the incidental taking of marine mammals specified in paragraph (b) of this section by the Naval Air Warfare Center Weapons Division, U.S. Navy, and those persons it authorizes to engage in missile launch activities and associated aircraft and helicopter operations at the Naval Air Warfare Center Weapons Division facilities on San Nicolas Island, California.

(b) The incidental take of marine mammals under the activity identified in paragraph (a) of this section is limited to the following species: northern elephant seals (*Mirounga angustirostris*), harbor seals (*Phoca vitulina*), and California sea lions (*Zalophus californianus*).

(c) This Authorization is valid only for activities associated with the launching of a total of 40 Coyote (or similar sized and smaller) missiles per year from San Nicolas Island, California.

§216.151 Effective dates.

This subpart is effective June 2, 2009 through June 2, 2014.

§216.152 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§216.106 and 216.157, the U.S. Navy, its contractors, and clients, may incidentally, but not intentionally, take marine mammals by harassment, within the area described in §216.150, provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate Letter of Authorization.

(b) The taking of marine mammals is authorized for the species listed in §216.150(b) and is limited to Level B Harassment.

§216.153 Prohibitions.

Notwithstanding takings contemplated in §216.150 and authorized by a Letter of Authorization issued under §§216.106 and 216.157, no person in connection with the activities described in §216.150 may:

(a) Take any marine mammal not specified in §216.150(b);

(b) Take any marine mammal specified in §216.150(b) other than by incidental, unintentional harassment, as discussed in §216.152;

(c) Take a marine mammal specified in §216.150(b) if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or a Letter of Authorization issued under §§216.106 and 216.157.

§216.154 Mitigation.

(a) The activity identified in §216.150 must be conducted in a manner that minimizes, to the greatest extent practicable, adverse impacts on marine mammals and their habitats. When conducting operations identified in §216.150(c), the mitigation measures contained in the Letter of Authorization issued under §§216.106 and 216.157 must be implemented. These mitigation measures include (but are not limited to):

(1) The holder of the Letter of Authorization must prohibit personnel from entering pinniped haul-out sites below the missile's predicted flight path for 2 hours prior to planned missile launches.

(2) The holder of the Letter of Authorization must avoid launch activities during harbor seal pupping season (February through April), unless constrained by factors including, but not limited to, human safety, national security, or for launch trajectory necessary to meet mission objectives.

(3) The holder of the Letter of Authorization must limit launch activities during other pinniped pupping seasons, unless constrained by factors including, but not limited to, human safety, national security, or for launch trajectory necessary to meet mission objectives.

(4) The holder of the Letter of Authorization must not launch missiles from the Alpha Complex at low elevation (less than 1,000 feet (305 m)) on launch azimuths that pass close to pinniped haul-out sites when occupied.

(5) The holder of the Letter of Authorization must avoid launching multiple missiles in quick succession over